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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/857,160

07/01/2001

Charles Eldering

T705-13

9699

27832

7590

05/02/2006

TECHNOLOGY, PATENTS AND LICENSING, INC./PRIME  
2003 SOUTH EASTON RD  
SUITE 208  
DOYLESTOWN, PA 18901

EXAMINER

ALVAREZ, RAQUEL

ART UNIT

PAPER NUMBER

3622

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/857,160

Applicant(s)

ELDERING ET AL.

Examiner

Raquel Alvarez

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/3- 7/26-8/11</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This office action is in response to communication filed on 7/1/2001.
2. Claims 1-14 are presented for examination.

#### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-14 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-61 of U.S. Patent No. 6,684,194.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented application further claims that the subscriber characteristics includes characteristics that are not directly associated with the subscriber interactions. Official notice is taken that it is old and well known in marketing and the like to store and keep track of user's characteristics such as their demographics

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and buying habits in order to better target products and services to the users. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included characteristics that are not directly associated with the subscriber interactions with the system because such a modification would allow to better target the subscribers taken into account other factors.

5. Claims 1-14 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-29 of U.S. Patent No. 6,714,917.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented application further claims non-subscriber interaction traits. Official notice is taken that it is old and well known in marketing and the like to keep track of non-customer information, such as having the non-customer fill out a survey or the like in order to solicit the customer later on to become a customer. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included non-subscriber interaction traits because such a modification would allow the system to induce non-customer to become customers.

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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6. Claims 1-8, 10-13 are rejected under 35 U.S.C. 102(a) as being anticipated by Williams et al.(5,977,964 hereinafter Williams).

With respect to claim 1, 5-7, 10-12, Williams teaches a method for identifying a subscriber (Abstract and col. 3, lines 14-19). Monitoring a plurality of viewing sessions (i.e. viewing activities such as volume control, channel changes while watching a cable or satellite program is monitored)(Figure 1, col. 5, lines 52-59); clustering the viewing sessions wherein the sessions within a cluster have a common identifier representative of a subscriber selection data (i.e. the collection of viewing sessions and related data based on the user's viewing habits and activities is recorded in user profile database 800); identifying a subscriber from the clusters of viewing sessions based on the subscriber selection data (i.e. the system determines which user of a plurality of users is currently using the system by comparing received inputs and current settings to at least a subset of the user profiles for at least a subset of the plurality of entertainment system users)(col. 3, lines 14-19).

With respect to claims 2-3, Williams further teaches generating a program characteristics vector and a demographic vector for each of the viewing sessions (i.e. based on the characteristics for the program, the demographic for that user is determined. Example, a child or an adult is using the system)(col. 6, lines 40-49); processing the program characteristics vector and the demographic vector to generate one or more clusters of session data vectors (i.e. based on the nature of the program

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and the demographic of the user a profile is determined for that particular member of the household)(col. 6, lines 25-49).

With respect to claim 4, Williams further teaches generating a signature signal based upon the EPG related data (i.e. based upon the uses interactions, an identifier is selected for the user)(col. 5, lines 64-, col. 6, lines 1-12); and correlating the signature signal to one or more common identifiers (i.e. the user's identifier is matched to the other common identifiers for that user)(col. 5, lines 64-, col. 6, lines 1-12).

With respect to claims 8 and 13, Williams further teaches that the subscriber selection data is time of day viewing data (col. 7, lines 59 to col. 8, lines 1-3).

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams further in view of Hutcheson et al. (5,465,308 hereinafter Hutcheson).

Claims 9 and 14 further recite utilizing Fourier transformation. Williams does not specifically teach using Fourier transformation. On the other hand, Hutcheson teaches a pattern recognition system that utilizes Fourier transformation (Abstract). It would have been obvious to a person of ordinary skill in the art at the time of Applicant's

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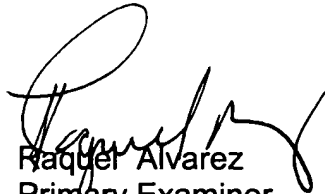
invention to have included using Fourier transformation in the system of Williams because such a modification would enabled easier analysis of the monitored subscriber activities of Williams by placing the data function into a representation that is easier to work with.

**Point of contact**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raquel Alvarez whose telephone number is (571)272-6715. The examiner can normally be reached on 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric w. Stamber can be reached on (571)272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Raquel Alvarez  
Primary Examiner  
Art Unit 3622

R.A.  
4/21/2006